

REMARKS

The above amendments and following remarks are submitted in response to the Official Action of the Examiner mailed December 5, 2005. Having addressed all objections and grounds of rejection, claims 1-22, being all the pending claims, are now deemed in condition for allowance. Entry of this amendment and reconsideration to that end is respectfully requested.

Claims 1-22 have been rejected under 35 U.S.C. 103(a) as being obvious over Cool ICE User's Guide Release 1.0 (hereinafter referred to as "Cool ICE") in view of an article entitled "A Distributed Real-Time Database for Heterogeneous Computer Control Systems", by Madan et al (hereinafter referred to as "Madan"). This ground of rejection is respectfully traversed for failure of the Examiner to make a *prima facie* case of obviousness.

To make a *prima facie* case of obviousness, MPEP 2143 requires the Examiner to provide evidence and argument showing: 1) motivation to make the alleged combination; 2) reasonable likelihood of success of the alleged combination; and 3) all claimed elements within the alleged combination. The Examiner has failed to make any of these three required showings. Therefore, because the Examiner has not made a *prima facie* case of obviousness, Applicants need not and indeed cannot offer appropriate evidence and argument in rebuttal.

Applicants have previously briefed their concerns with the continuing failure of the Examiner to meet her burden under MPEP

2143 to show motivation and reasonable likelihood of success of the alleged combination. In response thereto, the Examiner again reiterates that she does not find Applicants' arguments to be persuasive and repeats her conclusions without meeting the requirements of MPEP 2143. Therefore, it is deemed superfluous for Applicants to repeat arguments which are already of record and deemed preserved as issues on appeal should that become necessary.

As to the requirement of MPEP 2143 to show all claimed elements within the alleged combination, claim 1 and all other pending claims have been amended to require that the claimed "unavailability message" be embodied as an HTML display page to actually notify the human user of the unavailability of the claimed data base management system and that the claimed "service request" will not be honored. This limitation is completely supported throughout Applicants' disclosure and is summarized at page 9, lines 12-16.

This is readily distinguishable from Madan which is concerned with communication between different software programs. This is clearly discussed in the Abstract which states in part:

All communications are through a set of predefined messages. The kernel does not distinguish between messages received from client applications and messages received from a remote kernel.

All "messages" of Madan are between software programs (i.e., either "kernels" or "client applications"). Madan says nothing of communicating with people, such as the claimed "user". Madan

cannot communicate with a person using such software-to-software "messages".

Furthermore, though Figure 5 of Madan lists the six (6) different messages defined in the system, none is the claimed "unavailability message". The six messages defined by Madan are:

1. Create Message;
2. Update Message;
3. Update Message response;
4. Update Confirm Message Response;
5. Query Message; and
6. Query Message Response.

It is respectfully requested that the Examiner indicate which of these six predefined messages of Madan is the claimed "unavailability message". It is absolutely baffling that the Examiner could consider any of these six messages to be the claimed "unavailability message".

The differences in approach between the claimed invention and Madan can also be illustrated by Madan, paragraph 7. The section begins:

Since (sic) the RTDDBMS has to serve a Real-Time environment, a Time-Out mechanism has (sic) provided at appropriate places.....Similarly, if at transaction initiating point the status of transaction is not received from the serving kernel within time out period the transaction is aborted.

Therefore, unlike Applicants' claimed invention, if Madan has an unavailability (or failure) situation, the "transaction is aborted". Furthermore, unlike Applicants' claimed invention, no unavailability message is provided. Instead, the system is simply

permitted to "time-out". The difference in handling the same unavailability situation is due in large part to the "real-time" nature of Madan and the demand batch environment of Applicants' invention. Madan uses "messages" to communicate between software programs, whereas Applicants' claimed invention uses "messages" to communicate between software programs and people.

The rejection of amended claim 1 as amended, and all claims depending therefrom is respectfully traversed.

Claims 2-5 depend from claims and add further limitations. Instead of addressing Applicants' claimed invention as required by law, the Examiner simply states:

Regarding claims 2-5; a repository for storing said unavailability message [note Madan et al., figure 5; also note design of system tables at page 436].

Not only does the Examiner refuse to address the claimed invention, she cites Fig. 5 as allegedly showing a "repository" and page 436 to show "design of system tables. Fig. 5 has no "repository" and page 436 has no "design of system tables". Nevertheless, in the spirit of cooperation, claim 2 has been amended to explicitly require that the unavailability message be stored as a "text file", and claim 4 has been amended to show administrator input to the unavailability message. The rejection of claims 2-5 is respectfully traversed for failure of the Examiner to examine claims 2-5 in accordance with controlling law.

Instead of examining claims 6-22, which have differing statutory and judicial bases of patentability as well as differing claim limitations, the Examiner simply states:

The limitations of claims 6-22 have been addressed above in claims 1-5, except for the following: transferring an unavailability message to said user terminal if said determining step determines data base management system is not currently capable of honoring said server request [note: Madan page 435 through 436 the Kernel checks the nodes to see which is available and transfer appropriate transaction].

In addition to this statement being legally and grammatically incorrect, to the extent understandable, it is clearly erroneous. The rejection of claims 6-22 is respectfully rejected as being improperly examined.

Having thus responded to each objection and ground of rejection, Applicants respectfully request entry of this amendment and allowance of claims 1-22, as amended, being the only pending claims.

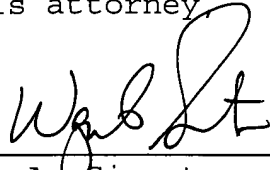
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Respectfully submitted,

Niels Gebauer

By his attorney,

Date March 6, 2006



Wayne A. Sivertson
Reg. No. 25,645
Suite 401
Broadway Place East
3433 Broadway Street N.E.
Minneapolis, MN 55413
(612) 331-1464